

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER HAY MARTIN,

Plaintiff-Appellee,

v

ALAN VY MARTIN,

Defendant-Appellant.

UNPUBLISHED

June 19, 2003

No. 237595

Grand Traverse Circuit Court

LC No. 00-020341-DM

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

GRIFFIN, J. (*concurring in part and dissenting in part*).

I respectfully dissent from the affirmance of the determination that defendant's premarital down payment for the future marital home was a marital asset. In regard to the other issues, I concur and join the majority's opinion.

Defendant argues that the trial court erred by characterizing defendant's down payment for the marital home as joint marital property. I agree. Defendant made a down payment on the marital home from his own personal funds before the parties were married. The trial court held that the entire equity of the home was marital property. However, plaintiff was entitled to share only in the equity and appreciation that accrued after the parties married. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997).¹ Although there may exist some justification for invading defendant's separate property had the down payment been characterized as a separate asset, it was incumbent on the trial court to first characterize the property correctly and then determine whether there was reason to invade it. *Id.* Because the trial court incorrectly characterized the down payment as marital property, it failed to employ the necessary analysis and thus committed clear error.

I would reverse and remand for further proceedings consistent with *Reeves, supra*.

/s/ Richard Allen Griffin

¹ Pursuant to MCR 7.215(I)(1), *Reeves* is a precedentially binding decision that must be followed by our panel of the Court of Appeals. The failure of the majority to comply with *Reeves* appears to be a violation of the court rule.